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Equal Employment Opportunity Commission, Plaintiff, v. Mint Julep Restaurant Operations, LLC d/b/a Cheddar's Casual Cafe, Defendant.

Judge John T. Fowlkes

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Equal Employment Opportunity Commission, Plaintiff, v. Mint Julep Restaurant Operations, LLC d/b/a Cheddar's Casual Cafe, Defendant.

Keywords

EEOC, Mint Julep Restaurant Operations LLC, Cheddar's Casual Cafe, 2:15-cv-02650, Consent Decree, Sexual Harassment, Disparate Treatment, Sex, Female, Service, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

V.

MINT JULEP RESTAURANT OPERATIONS, LLC
d/b/a CHEDDAR'S CASUAL CAFE

Defendant.

CIVIL ACTION NO
2:15-cv-02650

CONSENT DECREE

INTRODUCTION

Plaintiff, Equal Employment Opportunity Commission (EEOC or Commission) is the federal agency tasked with enforcing federal laws prohibiting employment discrimination. One of laws enforced by the EEOC is Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq., (Title VII). Among other things, Title VII prohibits employers from discriminating against employees on the basis of sex. Further, Title VII prohibits employers from retaliating against employees who complain about unlawful harassment/discrimination.

Defendant, Mint Julep Restaurant Operations, LLC, d/b/a Cheddar's Casual Café (Defendant or Cheddar's) is the franchisee of at least 42 Cheddar's Casual Cafés in Kentucky, Ohio, Indiana, Tennessee, Virginia, West Virginia and North Carolina.

Cheddar's Western Tennessee restaurants are located in Memphis, Cordova, and Jackson, Tennessee.

The Commission filed a lawsuit on September 29, 2015 (the Complaint) to remedy unlawful employment practices on the basis of sex, in violation of Title VII and Title I of the Civil Rights Act of 1991. The Commission alleged that Defendant subjected Christy Jones, Shounteil Haywood and a class of female employees to sexual harassment.

The parties enter into this Consent Decree (Decree) to resolve this case. Both parties recognize this Decree does not constitute a finding on the merits of the case and does not constitute an admission by Defendant of the allegations in the Complaint. The Commission and the Defendant have consented to entry of this Decree to avoid the additional expense and other burdens that continued litigation of this case would involve.

This Decree represents the only agreement between the Commission and the Defendant with respect to the claims alleged in the matter of *EEOC v. Mint Julep, No. 2:15-cv-02650*. If the Court does not approve this Decree, the parties agree that this document shall not be used as evidence or admissible in any subsequent proceeding in this lawsuit.

FINDINGS

After examining the terms of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds:

- (a) This Court has jurisdiction of the subject matter of this action and the parties.

(b) The terms of this Decree are adequate, fair, reasonable, equitable, and just. The Decree adequately protects the rights of the Commission, the Defendant, and the public interest.

(c) The entry of this Decree furthers the objectives of Title VII and appears in the best interests of the parties and the public.

It is hereby **ORDERED, ADJUDGED AND DECREED:**

I. COURT JURISDICTION

1. The United States District Court for the Western District of Tennessee, Western Division, has jurisdiction over the parties and the subject matter of this litigation and will retain jurisdiction over this Decree for the purposes of enforcement.

2. No party shall contest jurisdiction of this Court to enforce this Decree and its terms or the right of the Commission to seek enforcement in the event Defendant breaches any of the terms of this Decree.

II. SCOPE AND TIME FRAME OF THIS DECREE

3. This Decree resolves all issues and claims arising out of the Commission's Complaint in Civil Action No. 2:15-cv-02650, alleging unlawful employment practices by Defendant based on Charge Nos. 490-2012-02230 and 846-2013-36670 filed by Christy Jones and Shounteil Haywood, respectively. This Decree also resolves all issues and claims arising out of Charge No. 490-2014-02380 filed by Carmen Yelvington. This Decree resolves only Charge Nos. 490-2012-02230, 846-2013-36670 and 490-2014-02380.

4. Upon the date the Court enters the Decree, the provisions of this Decree become immediately effective and binding upon the parties to this lawsuit for three years after the effective date of this Decree.

III. FUTURE COMPLIANCE WITH THE LAW

5. Defendant, its managers and supervisory employees, agents, officers, successors and assigns and all persons in active concert or participating with it are enjoined from discriminating against any employee at its Memphis location because of sex. This includes subjecting employees to a hostile work environment based on sexual harassment.

6. Defendant, its managers and supervisory employees, agents, officers, successors and assigns and all persons in active concert or participating with it are enjoined from retaliating against any employee or applicant for employment because they opposed sexual harassment.

IV. RELIEF FOR EACH AGGRIEVED INDIVIDUAL

7. In full and final settlement of the claims brought in the Commission's Complaint, Defendant shall pay a total of \$450,000 to resolve this action.

8. To receive money under this Decree, each aggrieved individual must execute the attached Release, Exhibit A, and return it to the EEOC. The EEOC will promptly provide all executed Releases to Defendant.

9. The distribution of the settlement amount among the 15 identified aggrieved individuals shall be determined by the EEOC. As soon as reasonably possible, the EEOC shall provide Defendant with a distribution list setting forth the names and monetary allocations.

10. Upon Defendant's receipt of fully executed Releases from the EEOC, Defendant shall, within 20 days, forward, via regular certified mail, an individual check to each Claimant and shall provide proof of transmission of same to EEOC.

11. The total amount is designated as non-pecuniary compensatory damages.

12. Defendant will issue a 1099 form to each aggrieved individual.

13. Within five days of mailing the checks, Defendant will email a copy of the checks and related correspondence to Markeisha Savage, EEOC Trial Attorney, at the address listed below.

14. Late payment of a check shall be subject to the accrual of interest pursuant to 28 U.S.C. § 1961.

15. Defendant shall supply a neutral reference in response to any inquiries or reference checks regarding each claimants' employment. (See Exhibit B). This provision shall remain in force as long as the claimants use Defendant as a reference and is not limited to the duration of this Decree. Defendant shall not mention the subject charges of discrimination or this lawsuit when an inquiry is made by prospective employers about any claimant's employment.

**V. PREVENTING AND CORRECTING SEXUAL HARASSMENT
TITLE VII TRAINING FOR ALL MEMPHIS CHEDDAR'S EMPLOYEES**

16. Defendant will provide an annual training program on sexual harassment and retaliation under Title VII to all of its Memphis employees. Defendant will schedule the initial annual training and conduct it within 120 days after the date of entry of this Decree. Defendant agrees to conduct training each year for the duration of this Consent Decree for its Memphis employees.

17. Each year, Defendant will conduct the initial training in-person for its Memphis employees. A member of Defendant's senior management will appear in-person at this training to advise participants of the Company's Policy prohibiting sexual harassment and retaliation.

18. Defendant may video-record the annual training program for showing to current employees who are unable to attend the annual training and employees hired during the course of the year. A member of senior management or senior Human Resources official must be available either in person or by telephone, to answer any questions immediately following the video showing.

19. Defendant will advise staff in writing that the training is mandatory for all employees. The training will last at least one hour and will include, but not necessarily be limited to, the following:

- (a) The definition of Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991;

- (b) A discussion of sexual harassment and retaliation, including what treatment constitutes sexual harassment and retaliation;

- (c) A discussion of Defendant's Policy prohibiting sexual harassment and retaliation, including procedures and responsibilities for reporting, investigating and remedying sexual harassment and retaliation;

- (d) A discussion of what constitutes protected activity under Title VII;

- (e) A discussion regarding the EEOC, its role as a federal agency in enforcing anti-discrimination laws, an employee's right to file a charge of

discrimination, and a review of the notice poster required by Title VII, 42 U.S.C. § 2000e-10; and

(f) The location of the nearest EEOC office to file a charge.

20. After the training, Defendant will provide to the EEOC:

(a) a signed roster of all employees who attend the annual training;
and

(b) a signed roster of those employees who attend or view the subsequent training during the course of the year.

21. Each employee must print and sign his/her name and position and date, acknowledging attendance at the training.

22. Defendant will annually provide an additional one hour of training to all members of management at the Memphis location.

23. Defendant may video-record the annual management training for showing to current employees who are unable to attend the annual management training and employees hired during the course of the year. However, a member of senior management or senior Human Resources official must be available either in person or by telephone to answer any questions immediately following the video showing.

24. As with the annual training for all employees, Defendant will provide a roster of all employees who attend the annual management training and those who attend or view the management training during the course of the year. Each employee must print and sign the roster, acknowledging attendance at the training.

25. Defendant will retain an outside human resources consultant or attorney who has specialized knowledge of employment discrimination and who has experience

in labor and employment law to provide the annual trainings and to fulfill the training requirement in Paragraphs 16-24 above.

26. At least two weeks before the training sessions required in Paragraph 16, Defendant:

(a) shall notify the Commission of the dates and locations of the training; and

(b) provide a description of the training materials that it intends to use.

VI. ADDITIONAL EFFORTS TO PREVENT OR CORRECT SEXUAL HARASSMENT

27. During the duration of the Decree, Defendant will maintain working cameras throughout its Memphis restaurant. Defendant will ensure:

(a) the cameras remain operable at all times;

(b) the cameras do not retape over for at least 60 days;

(c) Defendant's HR Department will maintain and review the tapes randomly on a monthly basis; and

(d) if any of the cameras are disturbed, management will commence an investigation to determine who may have been involved in the destruction or editing of tapes in the workplace.

28. Within 120 days of the entry of this Decree, Defendant shall have its Human Resource Director;

(a) conduct confidential interviews of randomly chosen, female, non-management employees at Defendant's Memphis restaurant.

- (b) focus the interview on the interviewee's experience, if any, with harassment/discrimination at Defendant's Memphis restaurant and any related training that the interviewee may have received;

- (c) conduct these confidential interviews every six months during the duration of this Decree; and

- (d) provide the Commission with a signed report of the HR Director's finding with its report provided in Paragraph 32.

29. Defendant shall conduct exit interviews of all Memphis employees who resign with notice to determine whether they were subjected to or witnessed harassment/discrimination or retaliation. The exit interviews will ask:

- (a) Memphis employees to describe their experience working at Cheddar's;

- (b) whether any employees made comments of a sexual nature to the employee;

- (c) whether any management official made comments of a sexual nature;

- (d) if comments were made, identify the employee or management officials who made the comments by name and work shift;

- (e) the employee to identify any witness(es) who saw or heard the comments;

- (f) when the employee or management official made the comments;

- (g) where the employee or management official made the comments;

(h) how often the employee or management official made the comments;

(i) whether the employee complained;

(j) to whom the employee complained (name, shift);

(k) why the employee did not complain (if applicable); and

(l) why the employee left Cheddar's.

30. Defendant agrees it shall never rehire Michael Taylor or Michael Boyce at any of Defendant's restaurants and subsidiaries in the United States.

VII. RECORDKEEPING AND REPORTING PROVISIONS

31. Defendant shall maintain records of any complaints of sexual harassment or retaliation involving any of its employees or managers at the Memphis location.

These records must include:

(a) the names, addresses, telephone numbers of the applicant or employee making the complaint;

(b) the date of the report or complaint;

(c) a detailed description of the allegations made;

(d) the name and position of the alleged bad actor(s); and

(e) what actions, if any, Defendant took to resolve the complaint.

32. Defendant will provide six reports to the Commission.

(a) Each report must contain a summary of the information recorded by it pursuant to Paragraphs 28, 29, and 32, above;

(b) A record of attendance at the training program required by Paragraphs 16 and 22 above; and

(c) A certification by Defendant that the Notice required to be posted by Paragraph 35 below remained posted during the time period preceding the report.

33. Defendant will submit the first report within six months of the entry of this Decree and follow-up with the next report every six months thereafter. Defendant shall e-mail these annual reports to the Commission at the address below.

VIII. MONITORING COMPLIANCE WITH DECREE

34. The Equal Employment Opportunity Commission shall have the right to monitor and review compliance with this Decree. Defendant will cooperate with the Commission in any review function as it relates to this Decree. Specifically, the Commission shall have the right to:

- (a) review any and all documents required by this Decree; and
- (b) The EEOC will provide 10 days prior notice to Defendant of its intent to interview employees and management (in the presence of Defendant's counsel) related to the requirements of this Decree, if the EEOC has determined that Defendant is non-compliant with the terms of this Consent Decree.

IX. NOTICE POSTERS

35. Defendant shall post a laminated 11 x 14 copy of the Notice attached as Exhibit C within five business days of entry of this Decree. Defendant will post Exhibit C in a conspicuous place upon its Memphis, Tennessee premises, where notices to applicants and employees are customarily posted, and keep a copy of the Notice attached as Exhibit C posted for a period of three years.

36. Defendant must also keep posted in conspicuous places the notice poster required by Title VII, 42 U.S.C. § 2000e-10.

X. NOTIFICATION OF SUCCESSORS

37. During the term of this Consent Decree, prior to any sale, Defendant shall provide notice and a copy of this Decree to any successors, assigns, subsidiaries, affiliates, any other corporation or other entity that acquires Defendant, and any other corporation or other entity into which Defendant may merge, or with which Defendant may consolidate. The successors, assigns, acquiring entities, and any surviving entities upon merger or consolidation shall be fully liable for complying with the terms of the Decree.

XI. ENFORCEMENT OF DECREE

38. If Defendant fails to comply with the terms of this Decree, the Commission has a right to enforce the obligations under this Decree. The Commission will provide 20 days notice to Defendant of any deficiency in complying with the terms of this Decree. If the parties are unable to reach agreement regarding resolution of any such deficiency in Defendant's compliance with the terms of this Decree, the Commission will then have the option of petitioning the Court for relief.

XII. MISCELLANEOUS PROVISIONS

39. Each party to this Decree shall bear its own costs, attorney fees, and expenses in this lawsuit.

40. If the Court finds any provision of this Decree unlawful, the Court will sever only such provision, and the remainder of the Decree will remain in full force and effect.

41. When this Decree requires a certification by Defendant of any facts, such certification will be made under oath or penalty of perjury by an officer or management employee of Defendant.

42. When this Decree requires the submission by Defendant of reports, certifications, notices, or other materials to the Commission, they will be e-mailed to: markeisha.savage@eeoc.gov.

IT IS SO ORDERED THIS ____ DAY OF _____, 2016.

**JOHN T. FOWLKES, JR.
UNITED STATES DISTRICT JUDGE**

Approved by the parties:

FOR THE COMMISSION:

P. DAVID LOPEZ

General Counsel

GWENDOLYN YOUNG REAMS

Associate General Counsel



FAYE A. WILLIAMS

Regional Attorney
Tennessee Bar No. 011730



GERALD L. THORNTON

Supervisory Trial Attorney
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Trial Attorney
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EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

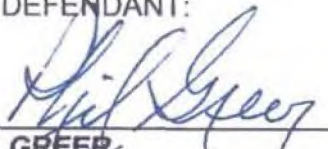
1407 Union Avenue, Ste. 900

Memphis, TN 38104

Telephone: (901) 544-0133


markeisha.savage@eeoc.gov

FOR DEFENDANT:



PHIL GREER

Chief Executive Officer
Mint Julep Restaurant Operations, LLC



ROBBIN HUTTON (TN Bar # 019440)

FORDHARRISON LLP
1715 Aaron Brenner, Suite 200
Memphis, Tennessee 38120 Telephone:
(901) 291-1500
rhutton@fordharrison.com

EXHIBIT A

RELEASE

In consideration for \$_____ paid to me by Mint Julep Restaurant Operations, LLC, d/b/a Cheddar's Casual Café, in connection with the resolution of *EEOC v. Mint Julep Restaurant Operations, LLC, d/b/a Cheddar's Casual Café*, Civil Action No. 2:15-cv-02650 (W.D. Tenn.), I waive my right to recover for any claims of sexual harassment/hostile work environment under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq., and all claims set forth in EEOC Charge Nos. 490-2021-02230, 846-2013-36670 and 490-2014-02380 that I had against Mint Julep Restaurant Operations, LLC, d/b/a Cheddar's Casual Café prior to the date of this release and that were included in the claims alleged in EEOC's complaint in *EEOC v. Mint Julep Restaurant Operations, LLC, d/b/a Cheddar's Casual Café*, Civil Action No. 2:15-cv-02650.

DATE

NAME

EXHIBIT B

LETTER OF REFERENCE

To Whom It May Concern:

This letter is in response to any inquiry regarding the employment of _____ while employed at Mint Julep Restaurant Operations, LLC, d/b/a Cheddar's Casual Café. Company policy provides that only dates of employment and position held can be provided in response to any employment inquiry.

Ms. _____ held the position of _____ at Mint Julep Restaurant Operations, LLC, d/b/a Cheddar's Casual Café from _____. I hope this information is helpful and that it satisfactorily answers your inquiry.

Sincerely,

Mint Julep Restaurant Operations, LLC, d/b/a Cheddar's Casual Café

EXHIBIT C

NOTICE TO ALL EMPLOYEES

This Notice is posted to all employees pursuant to a Consent Decree entered into between Mint Julep Restaurant Operations, LLC, d/b/a Cheddar's Casual Café and the Equal Employment Opportunity Commission as part of the settlement of a lawsuit, Civil Action No. 2:15-cv-02650, filed in the United States District Court of the Western District of Tennessee, Western Division. Additionally, Cheddar's must conduct training on the prevention of sexual harassment and retaliation in the workplace.

Harassment based on sex is a violation of Title VII of the Civil Rights Act, 42 U.S.C. §2000e, et seq. Federal law requires an employer to maintain a workplace free from harassment based on sex (gender), as well as race, color, religion, national origin, age (40 or older), genetic information or disability with respect to terms and conditions of employment.

It is also unlawful under Title VII to retaliate against any employee who opposes a practice made unlawful under federal law, files, assists or participates in the filing of a charge of discrimination or participates in any investigation under Title VII.

Mint Julep Restaurant Operations, LLC will not tolerate or condone sexual harassment against any employee or applicant for employment. Sexual harassment is a violation of company policy as well as federal law. Violation of this company policy by anyone employed by Mint Julep Restaurant Operations, LLC will result in disciplinary action up to and including termination.

If you believe you have been discriminated against, you have the right to seek assistance from:

Equal Employment Opportunity Commission
1407 Union Avenue, Suite 900
Memphis, Tennessee 38104
Telephone: 1-800-669-4000
TTY: 901-544-0112
Website: www.eeoc.gov

This Notice will remain posted for three years from the date signed below and must not be altered, defaced, removed, or covered by any other materials.

Date

Mint Julep Restaurant Operations, LLC, d/b/a
Cheddar's Casual Café

THIS IS AN OFFICIAL NOTICE